

1 AN ACT concerning taxation.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Use Tax Act is amended by changing  
5 Section 2 as follows:

6 (35 ILCS 105/2) (from Ch. 120, par. 439.2)

7 Sec. 2. "Use" means the exercise by any person of any  
8 right or power over tangible personal property incident to  
9 the ownership of that property, except that it does not  
10 include the sale of such property in any form as tangible  
11 personal property in the regular course of business to the  
12 extent that such property is not first subjected to a use for  
13 which it was purchased, and does not include the use of such  
14 property by its owner for demonstration purposes: Provided  
15 that the property purchased is deemed to be purchased for the  
16 purpose of resale, despite first being used, to the extent to  
17 which it is resold as an ingredient of an intentionally  
18 produced product or by-product of manufacturing. "Use" does  
19 not mean the demonstration use or interim use of tangible  
20 personal property by a retailer before he sells that tangible  
21 personal property. For watercraft or aircraft, if the period  
22 of demonstration use or interim use by the retailer exceeds  
23 18 months, the retailer shall pay on the retailers' original  
24 cost price the tax imposed by this Act, and no credit for  
25 that tax is permitted if the watercraft or aircraft is  
26 subsequently sold by the retailer. "Use" does not mean the  
27 physical incorporation of tangible personal property, to the  
28 extent not first subjected to a use for which it was  
29 purchased, as an ingredient or constituent, into other  
30 tangible personal property (a) which is sold in the regular  
31 course of business or (b) which the person incorporating such

1 ingredient or constituent therein has undertaken at the time  
2 of such purchase to cause to be transported in interstate  
3 commerce to destinations outside the State of Illinois:  
4 Provided that the property purchased is deemed to be  
5 purchased for the purpose of resale, despite first being  
6 used, to the extent to which it is resold as an ingredient of  
7 an intentionally produced product or by-product of  
8 manufacturing.

9 "Watercraft" means a Class 2, Class 3, or Class 4  
10 watercraft as defined in Section 3-2 of the Boat Registration  
11 and Safety Act, a personal watercraft, or any boat equipped  
12 with an inboard motor.

13 "Purchase at retail" means the acquisition of the  
14 ownership of or title to tangible personal property through a  
15 sale at retail.

16 "Purchaser" means anyone who, through a sale at retail,  
17 acquires the ownership of tangible personal property for a  
18 valuable consideration.

19 "Sale at retail" means any transfer of the ownership of  
20 or title to tangible personal property to a purchaser,  
21 including an Internet transfer, for the purpose of use, and  
22 not for the purpose of resale in any form as tangible  
23 personal property to the extent not first subjected to a use  
24 for which it was purchased, for a valuable consideration:  
25 Provided that the property purchased is deemed to be  
26 purchased for the purpose of resale, despite first being  
27 used, to the extent to which it is resold as an ingredient of  
28 an intentionally produced product or by-product of  
29 manufacturing. For this purpose, slag produced as an  
30 incident to manufacturing pig iron or steel and sold is  
31 considered to be an intentionally produced by-product of  
32 manufacturing. "Sale at retail" includes any such transfer  
33 made for resale unless made in compliance with Section 2c of  
34 the Retailers' Occupation Tax Act, as incorporated by

1 reference into Section 12 of this Act. Transactions whereby  
2 the possession of the property is transferred but the seller  
3 retains the title as security for payment of the selling  
4 price are sales.

5 "Sale at retail" shall also be construed to include any  
6 Illinois florist's sales transaction in which the purchase  
7 order is received in Illinois by a florist and the sale is  
8 for use or consumption, but the Illinois florist has a  
9 florist in another state deliver the property to the  
10 purchaser or the purchaser's donee in such other state.

11 Nonreusable tangible personal property that is used by  
12 persons engaged in the business of operating a restaurant,  
13 cafeteria, or drive-in is a sale for resale when it is  
14 transferred to customers in the ordinary course of business  
15 as part of the sale of food or beverages and is used to  
16 deliver, package, or consume food or beverages, regardless of  
17 where consumption of the food or beverages occurs. Examples  
18 of those items include, but are not limited to nonreusable,  
19 paper and plastic cups, plates, baskets, boxes, sleeves,  
20 buckets or other containers, utensils, straws, placemats,  
21 napkins, doggie bags, and wrapping or packaging materials  
22 that are transferred to customers as part of the sale of food  
23 or beverages in the ordinary course of business.

24 The purchase, employment and transfer of such tangible  
25 personal property as newsprint and ink for the primary  
26 purpose of conveying news (with or without other information)  
27 is not a purchase, use or sale of tangible personal property.

28 "Selling price" means the consideration for a sale valued  
29 in money whether received in money or otherwise, including  
30 cash, credits, property other than as hereinafter provided,  
31 and services, but not including the value of or credit given  
32 for traded-in tangible personal property where the item that  
33 is traded-in is of like kind and character as that which is  
34 being sold, and shall be determined without any deduction on

1 account of the cost of the property sold, the cost of  
2 materials used, labor or service cost or any other expense  
3 whatsoever, but does not include interest or finance charges  
4 which appear as separate items on the bill of sale or sales  
5 contract nor charges that are added to prices by sellers on  
6 account of the seller's tax liability under the "Retailers'  
7 Occupation Tax Act", or on account of the seller's duty to  
8 collect, from the purchaser, the tax that is imposed by this  
9 Act, or on account of the seller's tax liability under  
10 Section 8-11-1 of the Illinois Municipal Code, as heretofore  
11 and hereafter amended, or on account of the seller's tax  
12 liability under the "County Retailers' Occupation Tax Act".  
13 Effective December 1, 1985, "selling price" shall include  
14 charges that are added to prices by sellers on account of the  
15 seller's tax liability under the Cigarette Tax Act, on  
16 account of the seller's duty to collect, from the purchaser,  
17 the tax imposed under the Cigarette Use Tax Act, and on  
18 account of the seller's duty to collect, from the purchaser,  
19 any cigarette tax imposed by a home rule unit.

20 The phrase "like kind and character" shall be liberally  
21 construed (including but not limited to any form of motor  
22 vehicle for any form of motor vehicle, or any kind of farm or  
23 agricultural implement for any other kind of farm or  
24 agricultural implement), while not including a kind of item  
25 which, if sold at retail by that retailer, would be exempt  
26 from retailers' occupation tax and use tax as an isolated or  
27 occasional sale.

28 "Department" means the Department of Revenue.

29 "Person" means any natural individual, firm, partnership,  
30 association, joint stock company, joint adventure, public or  
31 private corporation, limited liability company, or a  
32 receiver, executor, trustee, guardian or other representative  
33 appointed by order of any court.

34 "Retailer" means and includes every person engaged in the

1 business of making sales at retail as defined in this  
2 Section.

3 A person who holds himself or herself out as being  
4 engaged (or who habitually engages) in selling tangible  
5 personal property at retail is a retailer hereunder with  
6 respect to such sales (and not primarily in a service  
7 occupation) notwithstanding the fact that such person designs  
8 and produces such tangible personal property on special order  
9 for the purchaser and in such a way as to render the property  
10 of value only to such purchaser, if such tangible personal  
11 property so produced on special order serves substantially  
12 the same function as stock or standard items of tangible  
13 personal property that are sold at retail.

14 A person whose activities are organized and conducted  
15 primarily as a not-for-profit service enterprise, and who  
16 engages in selling tangible personal property at retail  
17 (whether to the public or merely to members and their guests)  
18 is a retailer with respect to such transactions, excepting  
19 only a person organized and operated exclusively for  
20 charitable, religious or educational purposes either (1), to  
21 the extent of sales by such person to its members, students,  
22 patients or inmates of tangible personal property to be used  
23 primarily for the purposes of such person, or (2), to the  
24 extent of sales by such person of tangible personal property  
25 which is not sold or offered for sale by persons organized  
26 for profit. The selling of school books and school supplies  
27 by schools at retail to students is not "primarily for the  
28 purposes of" the school which does such selling. This  
29 paragraph does not apply to nor subject to taxation  
30 occasional dinners, social or similar activities of a person  
31 organized and operated exclusively for charitable, religious  
32 or educational purposes, whether or not such activities are  
33 open to the public.

34 A person who is the recipient of a grant or contract

1 under Title VII of the Older Americans Act of 1965 (P.L.  
2 92-258) and serves meals to participants in the federal  
3 Nutrition Program for the Elderly in return for contributions  
4 established in amount by the individual participant pursuant  
5 to a schedule of suggested fees as provided for in the  
6 federal Act is not a retailer under this Act with respect to  
7 such transactions.

8 Persons who engage in the business of transferring  
9 tangible personal property upon the redemption of trading  
10 stamps are retailers hereunder when engaged in such business.

11 The isolated or occasional sale of tangible personal  
12 property at retail by a person who does not hold himself out  
13 as being engaged (or who does not habitually engage) in  
14 selling such tangible personal property at retail or a sale  
15 through a bulk vending machine does not make such person a  
16 retailer hereunder. However, any person who is engaged in a  
17 business which is not subject to the tax imposed by the  
18 "Retailers' Occupation Tax Act" because of involving the sale  
19 of or a contract to sell real estate or a construction  
20 contract to improve real estate, but who, in the course of  
21 conducting such business, transfers tangible personal  
22 property to users or consumers in the finished form in which  
23 it was purchased, and which does not become real estate,  
24 under any provision of a construction contract or real estate  
25 sale or real estate sales agreement entered into with some  
26 other person arising out of or because of such nontaxable  
27 business, is a retailer to the extent of the value of the  
28 tangible personal property so transferred. If, in such  
29 transaction, a separate charge is made for the tangible  
30 personal property so transferred, the value of such property,  
31 for the purposes of this Act, is the amount so separately  
32 charged, but not less than the cost of such property to the  
33 transferor; if no separate charge is made, the value of such  
34 property, for the purposes of this Act, is the cost to the

1 transferor of such tangible personal property.

2 "Retailer maintaining a place of business in this State",  
3 or any like term, means and includes any of the following  
4 retailers:

5 1. A retailer having or maintaining within this  
6 State, directly or by a subsidiary, an office,  
7 distribution house, sales house, warehouse or other place  
8 of business, or any agent or other representative  
9 operating within this State under the authority of the  
10 retailer or its subsidiary, irrespective of whether such  
11 place of business or agent or other representative is  
12 located here permanently or temporarily, or whether such  
13 retailer or subsidiary is licensed to do business in this  
14 State. However, the ownership of property that is located  
15 at the premises of a printer with which the retailer has  
16 contracted for printing and that consists of the final  
17 printed product, property that becomes a part of the  
18 final printed product, or copy from which the printed  
19 product is produced shall not result in the retailer  
20 being deemed to have or maintain an office, distribution  
21 house, sales house, warehouse, or other place of business  
22 within this State.

23 2. A retailer soliciting orders for tangible  
24 personal property by means of a telecommunication or  
25 television shopping system (which utilizes toll free  
26 numbers) which is intended by the retailer to be  
27 broadcast by cable television or other means of  
28 broadcasting, to consumers located in this State.

29 3. A retailer, pursuant to a contract with a  
30 broadcaster or publisher located in this State,  
31 soliciting orders for tangible personal property by means  
32 of advertising which is disseminated primarily to  
33 consumers located in this State and only secondarily to  
34 bordering jurisdictions.

1           4. A retailer soliciting orders for tangible  
2 personal property by mail if the solicitations are  
3 substantial and recurring and if the retailer benefits  
4 from any banking, financing, debt collection,  
5 telecommunication, or marketing activities occurring in  
6 this State or benefits from the location in this State of  
7 authorized installation, servicing, or repair facilities.

8           5. A retailer that is owned or controlled by the  
9 same interests that own or control any retailer engaging  
10 in business in the same or similar line of business in  
11 this State.

12           6. A retailer having a franchisee or licensee  
13 operating under its trade name if the franchisee or  
14 licensee is required to collect the tax under this  
15 Section.

16           7. A retailer, pursuant to a contract with a cable  
17 television operator located in this State, soliciting  
18 orders for tangible personal property by means of  
19 advertising which is transmitted or distributed over a  
20 cable television system in this State.

21           8. A retailer engaging in activities in Illinois,  
22 which activities in the state in which the retail  
23 business engaging in such activities is located would  
24 constitute maintaining a place of business in that state.

25           9. A retailer soliciting orders for tangible  
26 personal property by means of the Internet that is  
27 intended to be transmitted to consumers located in this  
28 State.

29 "Bulk vending machine" means a nonelectrically operated  
30 vending machine, containing unsorted confections, nuts or  
31 other merchandise which, when a coin of a denomination not  
32 larger than one cent is inserted, are dispensed in equal  
33 portions, at random and without selection by the customer.

34 (Source: P.A. 90-289, eff. 8-1-97.)

1 Section 10. The Service Use Tax Act is amended by  
2 changing Section 2 as follows:

3 (35 ILCS 110/2) (from Ch. 120, par. 439.32)

4 Sec. 2. "Use" means the exercise by any person of any  
5 right or power over tangible personal property incident to  
6 the ownership of that property, but does not include the sale  
7 or use for demonstration by him of that property in any form  
8 as tangible personal property in the regular course of  
9 business. "Use" does not mean the interim use of tangible  
10 personal property nor the physical incorporation of tangible  
11 personal property, as an ingredient or constituent, into  
12 other tangible personal property, (a) which is sold in the  
13 regular course of business or (b) which the person  
14 incorporating such ingredient or constituent therein has  
15 undertaken at the time of such purchase to cause to be  
16 transported in interstate commerce to destinations outside  
17 the State of Illinois.

18 "Purchased from a serviceman" means the acquisition of  
19 the ownership of, or title to, tangible personal property  
20 through a sale of service.

21 "Purchaser" means any person who, through a sale of  
22 service, acquires the ownership of, or title to, any tangible  
23 personal property.

24 "Cost price" means the consideration paid by the  
25 serviceman for a purchase valued in money, whether paid in  
26 money or otherwise, including cash, credits and services, and  
27 shall be determined without any deduction on account of the  
28 supplier's cost of the property sold or on account of any  
29 other expense incurred by the supplier. When a serviceman  
30 contracts out part or all of the services required in his  
31 sale of service, it shall be presumed that the cost price to  
32 the serviceman of the property transferred to him or her by  
33 his or her subcontractor is equal to 50% of the

1 subcontractor's charges to the serviceman in the absence of  
2 proof of the consideration paid by the subcontractor for the  
3 purchase of such property.

4 "Selling price" means the consideration for a sale valued  
5 in money whether received in money or otherwise, including  
6 cash, credits and service, and shall be determined without  
7 any deduction on account of the serviceman's cost of the  
8 property sold, the cost of materials used, labor or service  
9 cost or any other expense whatsoever, but does not include  
10 interest or finance charges which appear as separate items on  
11 the bill of sale or sales contract nor charges that are added  
12 to prices by sellers on account of the seller's duty to  
13 collect, from the purchaser, the tax that is imposed by this  
14 Act.

15 "Department" means the Department of Revenue.

16 "Person" means any natural individual, firm, partnership,  
17 association, joint stock company, joint venture, public or  
18 private corporation, limited liability company, and any  
19 receiver, executor, trustee, guardian or other representative  
20 appointed by order of any court.

21 "Sale of service" means any transaction except:

22 (1) a retail sale of tangible personal property  
23 taxable under the Retailers' Occupation Tax Act or under  
24 the Use Tax Act.

25 (2) a sale of tangible personal property for the  
26 purpose of resale made in compliance with Section 2c of  
27 the Retailers' Occupation Tax Act.

28 (3) except as hereinafter provided, a sale or  
29 transfer of tangible personal property as an incident to  
30 the rendering of service for or by any governmental body,  
31 or for or by any corporation, society, association,  
32 foundation or institution organized and operated  
33 exclusively for charitable, religious or educational  
34 purposes or any not-for-profit corporation, society,

1 association, foundation, institution or organization  
2 which has no compensated officers or employees and which  
3 is organized and operated primarily for the recreation of  
4 persons 55 years of age or older. A limited liability  
5 company may qualify for the exemption under this  
6 paragraph only if the limited liability company is  
7 organized and operated exclusively for educational  
8 purposes.

9 (4) a sale or transfer of tangible personal  
10 property as an incident to the rendering of service for  
11 interstate carriers for hire for use as rolling stock  
12 moving in interstate commerce or by lessors under a lease  
13 of one year or longer, executed or in effect at the time  
14 of purchase of personal property, to interstate carriers  
15 for hire for use as rolling stock moving in interstate  
16 commerce so long as so used by such interstate carriers  
17 for hire, and equipment operated by a telecommunications  
18 provider, licensed as a common carrier by the Federal  
19 Communications Commission, which is permanently installed  
20 in or affixed to aircraft moving in interstate commerce.

21 (4a) a sale or transfer of tangible personal  
22 property as an incident to the rendering of service for  
23 owners, lessors, or shippers of tangible personal  
24 property which is utilized by interstate carriers for  
25 hire for use as rolling stock moving in interstate  
26 commerce so long as so used by interstate carriers for  
27 hire, and equipment operated by a telecommunications  
28 provider, licensed as a common carrier by the Federal  
29 Communications Commission, which is permanently installed  
30 in or affixed to aircraft moving in interstate commerce.

31 (5) a sale or transfer of machinery and equipment  
32 used primarily in the process of the manufacturing or  
33 assembling, either in an existing, an expanded or a new  
34 manufacturing facility, of tangible personal property for

1 wholesale or retail sale or lease, whether such sale or  
2 lease is made directly by the manufacturer or by some  
3 other person, whether the materials used in the process  
4 are owned by the manufacturer or some other person, or  
5 whether such sale or lease is made apart from or as an  
6 incident to the seller's engaging in a service occupation  
7 and the applicable tax is a Service Use Tax or Service  
8 Occupation Tax, rather than Use Tax or Retailers'  
9 Occupation Tax.

10 (5a) the repairing, reconditioning or remodeling,  
11 for a common carrier by rail, of tangible personal  
12 property which belongs to such carrier for hire, and as  
13 to which such carrier receives the physical possession of  
14 the repaired, reconditioned or remodeled item of tangible  
15 personal property in Illinois, and which such carrier  
16 transports, or shares with another common carrier in the  
17 transportation of such property, out of Illinois on a  
18 standard uniform bill of lading showing the person who  
19 repaired, reconditioned or remodeled the property to a  
20 destination outside Illinois, for use outside Illinois.

21 (5b) a sale or transfer of tangible personal  
22 property which is produced by the seller thereof on  
23 special order in such a way as to have made the  
24 applicable tax the Service Occupation Tax or the Service  
25 Use Tax, rather than the Retailers' Occupation Tax or the  
26 Use Tax, for an interstate carrier by rail which receives  
27 the physical possession of such property in Illinois, and  
28 which transports such property, or shares with another  
29 common carrier in the transportation of such property,  
30 out of Illinois on a standard uniform bill of lading  
31 showing the seller of the property as the shipper or  
32 consignor of such property to a destination outside  
33 Illinois, for use outside Illinois.

34 (6) a sale or transfer of distillation machinery

1 and equipment, sold as a unit or kit and assembled or  
2 installed by the retailer, which machinery and equipment  
3 is certified by the user to be used only for the  
4 production of ethyl alcohol that will be used for  
5 consumption as motor fuel or as a component of motor fuel  
6 for the personal use of such user and not subject to sale  
7 or resale.

8 (7) at the election of any serviceman not required  
9 to be otherwise registered as a retailer under Section 2a  
10 of the Retailers' Occupation Tax Act, made for each  
11 fiscal year sales of service in which the aggregate  
12 annual cost price of tangible personal property  
13 transferred as an incident to the sales of service is  
14 less than 35%, or 75% in the case of servicemen  
15 transferring prescription drugs or servicemen engaged in  
16 graphic arts production, of the aggregate annual total  
17 gross receipts from all sales of service. The purchase of  
18 such tangible personal property by the serviceman shall  
19 be subject to tax under the Retailers' Occupation Tax Act  
20 and the Use Tax Act. However, if a primary serviceman  
21 who has made the election described in this paragraph  
22 subcontracts service work to a secondary serviceman who  
23 has also made the election described in this paragraph,  
24 the primary serviceman does not incur a Use Tax liability  
25 if the secondary serviceman (i) has paid or will pay Use  
26 Tax on his or her cost price of any tangible personal  
27 property transferred to the primary serviceman and (ii)  
28 certifies that fact in writing to the primary serviceman.

29 Tangible personal property transferred incident to the  
30 completion of a maintenance agreement is exempt from the tax  
31 imposed pursuant to this Act.

32 Exemption (5) also includes machinery and equipment used  
33 in the general maintenance or repair of such exempt machinery  
34 and equipment or for in-house manufacture of exempt machinery

1 and equipment. For the purposes of exemption (5), each of  
2 these terms shall have the following meanings: (1)  
3 "manufacturing process" shall mean the production of any  
4 article of tangible personal property, whether such article  
5 is a finished product or an article for use in the process of  
6 manufacturing or assembling a different article of tangible  
7 personal property, by procedures commonly regarded as  
8 manufacturing, processing, fabricating, or refining which  
9 changes some existing material or materials into a material  
10 with a different form, use or name. In relation to a  
11 recognized integrated business composed of a series of  
12 operations which collectively constitute manufacturing, or  
13 individually constitute manufacturing operations, the  
14 manufacturing process shall be deemed to commence with the  
15 first operation or stage of production in the series, and  
16 shall not be deemed to end until the completion of the final  
17 product in the last operation or stage of production in the  
18 series; and further, for purposes of exemption (5),  
19 photoprocessing is deemed to be a manufacturing process of  
20 tangible personal property for wholesale or retail sale; (2)  
21 "assembling process" shall mean the production of any article  
22 of tangible personal property, whether such article is a  
23 finished product or an article for use in the process of  
24 manufacturing or assembling a different article of tangible  
25 personal property, by the combination of existing materials  
26 in a manner commonly regarded as assembling which results in  
27 a material of a different form, use or name; (3) "machinery"  
28 shall mean major mechanical machines or major components of  
29 such machines contributing to a manufacturing or assembling  
30 process; and (4) "equipment" shall include any independent  
31 device or tool separate from any machinery but essential to  
32 an integrated manufacturing or assembly process; including  
33 computers used primarily in operating exempt machinery and  
34 equipment in a computer assisted design, computer assisted

1 manufacturing (CAD/CAM) system; or any subunit or assembly  
2 comprising a component of any machinery or auxiliary, adjunct  
3 or attachment parts of machinery, such as tools, dies, jigs,  
4 fixtures, patterns and molds; or any parts which require  
5 periodic replacement in the course of normal operation; but  
6 shall not include hand tools. The purchaser of such machinery  
7 and equipment who has an active resale registration number  
8 shall furnish such number to the seller at the time of  
9 purchase. The user of such machinery and equipment and tools  
10 without an active resale registration number shall prepare a  
11 certificate of exemption for each transaction stating facts  
12 establishing the exemption for that transaction, which  
13 certificate shall be available to the Department for  
14 inspection or audit. The Department shall prescribe the form  
15 of the certificate.

16 Any informal rulings, opinions or letters issued by the  
17 Department in response to an inquiry or request for any  
18 opinion from any person regarding the coverage and  
19 applicability of exemption (5) to specific devices shall be  
20 published, maintained as a public record, and made available  
21 for public inspection and copying. If the informal ruling,  
22 opinion or letter contains trade secrets or other  
23 confidential information, where possible the Department shall  
24 delete such information prior to publication. Whenever such  
25 informal rulings, opinions, or letters contain any policy of  
26 general applicability, the Department shall formulate and  
27 adopt such policy as a rule in accordance with the provisions  
28 of the Illinois Administrative Procedure Act.

29 On and after July 1, 1987, no entity otherwise eligible  
30 under exemption (3) of this Section shall make tax free  
31 purchases unless it has an active exemption identification  
32 number issued by the Department.

33 The purchase, employment and transfer of such tangible  
34 personal property as newsprint and ink for the primary

1 purpose of conveying news (with or without other information)  
2 is not a purchase, use or sale of service or of tangible  
3 personal property within the meaning of this Act.

4 "Serviceman" means any person who is engaged in the  
5 occupation of making sales of service.

6 "Sale at retail" means "sale at retail" as defined in the  
7 Retailers' Occupation Tax Act.

8 "Supplier" means any person who makes sales of tangible  
9 personal property to servicemen for the purpose of resale as  
10 an incident to a sale of service.

11 "Serviceman maintaining a place of business in this  
12 State", or any like term, means and includes any serviceman:

13 1. having or maintaining within this State,  
14 directly or by a subsidiary, an office, distribution  
15 house, sales house, warehouse or other place of business,  
16 or any agent or other representative operating within  
17 this State under the authority of the serviceman or its  
18 subsidiary, irrespective of whether such place of  
19 business or agent or other representative is located here  
20 permanently or temporarily, or whether such serviceman or  
21 subsidiary is licensed to do business in this State;

22 2. soliciting orders for tangible personal property  
23 by means of a telecommunication or television shopping  
24 system (which utilizes toll free numbers) which is  
25 intended by the retailer to be broadcast by cable  
26 television or other means of broadcasting, to consumers  
27 located in this State;

28 3. pursuant to a contract with a broadcaster or  
29 publisher located in this State, soliciting orders for  
30 tangible personal property by means of advertising which  
31 is disseminated primarily to consumers located in this  
32 State and only secondarily to bordering jurisdictions;

33 4. soliciting orders for tangible personal property  
34 by mail if the solicitations are substantial and

1 recurring and if the retailer benefits from any banking,  
2 financing, debt collection, telecommunication, or  
3 marketing activities occurring in this State or benefits  
4 from the location in this State of authorized  
5 installation, servicing, or repair facilities;

6 5. being owned or controlled by the same interests  
7 which own or control any retailer engaging in business in  
8 the same or similar line of business in this State;

9 6. having a franchisee or licensee operating under  
10 its trade name if the franchisee or licensee is required  
11 to collect the tax under this Section;

12 7. pursuant to a contract with a cable television  
13 operator located in this State, soliciting orders for  
14 tangible personal property by means of advertising which  
15 is transmitted or distributed over a cable television  
16 system in this State; ~~or~~

17 8. engaging in activities in Illinois, which  
18 activities in the state in which the supply business  
19 engaging in such activities is located would constitute  
20 maintaining a place of business in that state; or

21 9. soliciting orders for tangible personal property  
22 by means of the Internet that is intended to be  
23 transmitted to consumers in this State.

24 (Source: P.A. 91-51, eff. 6-30-99.)

25 Section 15. The Service Occupation Tax Act is amended by  
26 changing Section 2 as follows:

27 (35 ILCS 115/2) (from Ch. 120, par. 439.102)

28 Sec. 2. "Transfer" means any transfer of the title to  
29 property or of the ownership of property, including an  
30 Internet transfer, whether or not the transferor retains  
31 title as security for the payment of amounts due him from the  
32 transferee.

1 "Cost Price" means the consideration paid by the  
2 serviceman for a purchase valued in money, whether paid in  
3 money or otherwise, including cash, credits and services, and  
4 shall be determined without any deduction on account of the  
5 supplier's cost of the property sold or on account of any  
6 other expense incurred by the supplier. When a serviceman  
7 contracts out part or all of the services required in his  
8 sale of service, it shall be presumed that the cost price to  
9 the serviceman of the property transferred to him by his or  
10 her subcontractor is equal to 50% of the subcontractor's  
11 charges to the serviceman in the absence of proof of the  
12 consideration paid by the subcontractor for the purchase of  
13 such property.

14 "Department" means the Department of Revenue.

15 "Person" means any natural individual, firm, partnership,  
16 association, joint stock company, joint venture, public or  
17 private corporation, limited liability company, and any  
18 receiver, executor, trustee, guardian or other representative  
19 appointed by order of any court.

20 "Sale of Service" means any transaction except:

21 (a) A retail sale of tangible personal property taxable  
22 under the Retailers' Occupation Tax Act or under the Use Tax  
23 Act.

24 (b) A sale of tangible personal property for the purpose  
25 of resale made in compliance with Section 2c of the  
26 Retailers' Occupation Tax Act.

27 (c) Except as hereinafter provided, a sale or transfer  
28 of tangible personal property as an incident to the rendering  
29 of service for or by any governmental body or for or by any  
30 corporation, society, association, foundation or institution  
31 organized and operated exclusively for charitable, religious  
32 or educational purposes or any not-for-profit corporation,  
33 society, association, foundation, institution or organization  
34 which has no compensated officers or employees and which is

1 organized and operated primarily for the recreation of  
2 persons 55 years of age or older. A limited liability company  
3 may qualify for the exemption under this paragraph only if  
4 the limited liability company is organized and operated  
5 exclusively for educational purposes.

6 (d) A sale or transfer of tangible personal property as  
7 an incident to the rendering of service for interstate  
8 carriers for hire for use as rolling stock moving in  
9 interstate commerce or lessors under leases of one year or  
10 longer, executed or in effect at the time of purchase, to  
11 interstate carriers for hire for use as rolling stock moving  
12 in interstate commerce, and equipment operated by a  
13 telecommunications provider, licensed as a common carrier by  
14 the Federal Communications Commission, which is permanently  
15 installed in or affixed to aircraft moving in interstate  
16 commerce.

17 (d-1) A sale or transfer of tangible personal property  
18 as an incident to the rendering of service for owners,  
19 lessors or shippers of tangible personal property which is  
20 utilized by interstate carriers for hire for use as rolling  
21 stock moving in interstate commerce, and equipment operated  
22 by a telecommunications provider, licensed as a common  
23 carrier by the Federal Communications Commission, which is  
24 permanently installed in or affixed to aircraft moving in  
25 interstate commerce.

26 (d-2) The repairing, reconditioning or remodeling, for a  
27 common carrier by rail, of tangible personal property which  
28 belongs to such carrier for hire, and as to which such  
29 carrier receives the physical possession of the repaired,  
30 reconditioned or remodeled item of tangible personal property  
31 in Illinois, and which such carrier transports, or shares  
32 with another common carrier in the transportation of such  
33 property, out of Illinois on a standard uniform bill of  
34 lading showing the person who repaired, reconditioned or

1 remodeled the property as the shipper or consignor of such  
2 property to a destination outside Illinois, for use outside  
3 Illinois.

4 (d-3) A sale or transfer of tangible personal property  
5 which is produced by the seller thereof on special order in  
6 such a way as to have made the applicable tax the Service  
7 Occupation Tax or the Service Use Tax, rather than the  
8 Retailers' Occupation Tax or the Use Tax, for an interstate  
9 carrier by rail which receives the physical possession of  
10 such property in Illinois, and which transports such  
11 property, or shares with another common carrier in the  
12 transportation of such property, out of Illinois on a  
13 standard uniform bill of lading showing the seller of the  
14 property as the shipper or consignor of such property to a  
15 destination outside Illinois, for use outside Illinois.

16 (d-4) Until January 1, 1997, a sale, by a registered  
17 serviceman paying tax under this Act to the Department, of  
18 special order printed materials delivered outside Illinois  
19 and which are not returned to this State, if delivery is made  
20 by the seller or agent of the seller, including an agent who  
21 causes the product to be delivered outside Illinois by a  
22 common carrier or the U.S. postal service.

23 (e) A sale or transfer of machinery and equipment used  
24 primarily in the process of the manufacturing or assembling,  
25 either in an existing, an expanded or a new manufacturing  
26 facility, of tangible personal property for wholesale or  
27 retail sale or lease, whether such sale or lease is made  
28 directly by the manufacturer or by some other person, whether  
29 the materials used in the process are owned by the  
30 manufacturer or some other person, or whether such sale or  
31 lease is made apart from or as an incident to the seller's  
32 engaging in a service occupation and the applicable tax is a  
33 Service Occupation Tax or Service Use Tax, rather than  
34 Retailers' Occupation Tax or Use Tax.

1 (f) The sale or transfer of distillation machinery and  
2 equipment, sold as a unit or kit and assembled or installed  
3 by the retailer, which machinery and equipment is certified  
4 by the user to be used only for the production of ethyl  
5 alcohol that will be used for consumption as motor fuel or as  
6 a component of motor fuel for the personal use of such user  
7 and not subject to sale or resale.

8 (g) At the election of any serviceman not required to be  
9 otherwise registered as a retailer under Section 2a of the  
10 Retailers' Occupation Tax Act, made for each fiscal year  
11 sales of service in which the aggregate annual cost price of  
12 tangible personal property transferred as an incident to the  
13 sales of service is less than 35% (75% in the case of  
14 servicemen transferring prescription drugs or servicemen  
15 engaged in graphic arts production) of the aggregate annual  
16 total gross receipts from all sales of service. The purchase  
17 of such tangible personal property by the serviceman shall be  
18 subject to tax under the Retailers' Occupation Tax Act and  
19 the Use Tax Act. However, if a primary serviceman who has  
20 made the election described in this paragraph subcontracts  
21 service work to a secondary serviceman who has also made the  
22 election described in this paragraph, the primary serviceman  
23 does not incur a Use Tax liability if the secondary  
24 serviceman (i) has paid or will pay Use Tax on his or her  
25 cost price of any tangible personal property transferred to  
26 the primary serviceman and (ii) certifies that fact in  
27 writing to the primary serviceman.

28 Tangible personal property transferred incident to the  
29 completion of a maintenance agreement is exempt from the tax  
30 imposed pursuant to this Act.

31 Exemption (e) also includes machinery and equipment used  
32 in the general maintenance or repair of such exempt machinery  
33 and equipment or for in-house manufacture of exempt machinery  
34 and equipment. For the purposes of exemption (e), each of

1 these terms shall have the following meanings: (1)  
2 "manufacturing process" shall mean the production of any  
3 article of tangible personal property, whether such article  
4 is a finished product or an article for use in the process of  
5 manufacturing or assembling a different article of tangible  
6 personal property, by procedures commonly regarded as  
7 manufacturing, processing, fabricating, or refining which  
8 changes some existing material or materials into a material  
9 with a different form, use or name. In relation to a  
10 recognized integrated business composed of a series of  
11 operations which collectively constitute manufacturing, or  
12 individually constitute manufacturing operations, the  
13 manufacturing process shall be deemed to commence with the  
14 first operation or stage of production in the series, and  
15 shall not be deemed to end until the completion of the final  
16 product in the last operation or stage of production in the  
17 series; and further for purposes of exemption (e),  
18 photoprocessing is deemed to be a manufacturing process of  
19 tangible personal property for wholesale or retail sale; (2)  
20 "assembling process" shall mean the production of any article  
21 of tangible personal property, whether such article is a  
22 finished product or an article for use in the process of  
23 manufacturing or assembling a different article of tangible  
24 personal property, by the combination of existing materials  
25 in a manner commonly regarded as assembling which results in  
26 a material of a different form, use or name; (3) "machinery"  
27 shall mean major mechanical machines or major components of  
28 such machines contributing to a manufacturing or assembling  
29 process; and (4) "equipment" shall include any independent  
30 device or tool separate from any machinery but essential to  
31 an integrated manufacturing or assembly process; including  
32 computers used primarily in operating exempt machinery and  
33 equipment in a computer assisted design, computer assisted  
34 manufacturing (CAD/CAM) system; or any subunit or assembly

1 comprising a component of any machinery or auxiliary, adjunct  
2 or attachment parts of machinery, such as tools, dies, jigs,  
3 fixtures, patterns and molds; or any parts which require  
4 periodic replacement in the course of normal operation; but  
5 shall not include hand tools. The purchaser of such machinery  
6 and equipment who has an active resale registration number  
7 shall furnish such number to the seller at the time of  
8 purchase. The purchaser of such machinery and equipment and  
9 tools without an active resale registration number shall  
10 furnish to the seller a certificate of exemption for each  
11 transaction stating facts establishing the exemption for that  
12 transaction, which certificate shall be available to the  
13 Department for inspection or audit.

14 The rolling stock exemption applies to rolling stock used  
15 by an interstate carrier for hire, even just between points  
16 in Illinois, if such rolling stock transports, for hire,  
17 persons whose journeys or property whose shipments originate  
18 or terminate outside Illinois.

19 Any informal rulings, opinions or letters issued by the  
20 Department in response to an inquiry or request for any  
21 opinion from any person regarding the coverage and  
22 applicability of exemption (e) to specific devices shall be  
23 published, maintained as a public record, and made available  
24 for public inspection and copying. If the informal ruling,  
25 opinion or letter contains trade secrets or other  
26 confidential information, where possible the Department shall  
27 delete such information prior to publication. Whenever such  
28 informal rulings, opinions, or letters contain any policy of  
29 general applicability, the Department shall formulate and  
30 adopt such policy as a rule in accordance with the provisions  
31 of the Illinois Administrative Procedure Act.

32 On and after July 1, 1987, no entity otherwise eligible  
33 under exemption (c) of this Section shall make tax free  
34 purchases unless it has an active exemption identification

1 number issued by the Department.

2 "Serviceman" means any person who is engaged in the  
3 occupation of making sales of service.

4 "Sale at Retail" means "sale at retail" as defined in the  
5 Retailers' Occupation Tax Act.

6 "Supplier" means any person who makes sales of tangible  
7 personal property to servicemen for the purpose of resale as  
8 an incident to a sale of service.

9 (Source: P.A. 91-51, eff. 6-30-99.)

10 Section 20. The Retailers' Occupation Tax Act is amended  
11 by changing Section 1 as follows:

12 (35 ILCS 120/1) (from Ch. 120, par. 440)

13 Sec. 1. Definitions.

14 "Sale at retail" means any transfer of the ownership of  
15 or title to tangible personal property to a purchaser,  
16 including an Internet transfer, for the purpose of use or  
17 consumption, and not for the purpose of resale in any form as  
18 tangible personal property to the extent not first subjected  
19 to a use for which it was purchased, for a valuable  
20 consideration: Provided that the property purchased is  
21 deemed to be purchased for the purpose of resale, despite  
22 first being used, to the extent to which it is resold as an  
23 ingredient of an intentionally produced product or byproduct  
24 of manufacturing. For this purpose, slag produced as an  
25 incident to manufacturing pig iron or steel and sold is  
26 considered to be an intentionally produced byproduct of  
27 manufacturing. Transactions whereby the possession of the  
28 property is transferred but the seller retains the title as  
29 security for payment of the selling price shall be deemed to  
30 be sales.

31 "Sale at retail" shall be construed to include any  
32 transfer of the ownership of or title to tangible personal

1 property to a purchaser, for use or consumption by any other  
2 person to whom such purchaser may transfer the tangible  
3 personal property without a valuable consideration, and to  
4 include any transfer, whether made for or without a valuable  
5 consideration, for resale in any form as tangible personal  
6 property unless made in compliance with Section 2c of this  
7 Act.

8 Sales of tangible personal property, which property, to  
9 the extent not first subjected to a use for which it was  
10 purchased, as an ingredient or constituent, goes into and  
11 forms a part of tangible personal property subsequently the  
12 subject of a "Sale at retail", are not sales at retail as  
13 defined in this Act: Provided that the property purchased is  
14 deemed to be purchased for the purpose of resale, despite  
15 first being used, to the extent to which it is resold as an  
16 ingredient of an intentionally produced product or byproduct  
17 of manufacturing.

18 "Sale at retail" shall be construed to include any  
19 Illinois florist's sales transaction in which the purchase  
20 order is received in Illinois by a florist and the sale is  
21 for use or consumption, but the Illinois florist has a  
22 florist in another state deliver the property to the  
23 purchaser or the purchaser's donee in such other state.

24 Nonreusable tangible personal property that is used by  
25 persons engaged in the business of operating a restaurant,  
26 cafeteria, or drive-in is a sale for resale when it is  
27 transferred to customers in the ordinary course of business  
28 as part of the sale of food or beverages and is used to  
29 deliver, package, or consume food or beverages, regardless of  
30 where consumption of the food or beverages occurs. Examples  
31 of those items include, but are not limited to nonreusable,  
32 paper and plastic cups, plates, baskets, boxes, sleeves,  
33 buckets or other containers, utensils, straws, placemats,  
34 napkins, doggie bags, and wrapping or packaging materials

1 that are transferred to customers as part of the sale of food  
2 or beverages in the ordinary course of business.

3 The purchase, employment and transfer of such tangible  
4 personal property as newsprint and ink for the primary  
5 purpose of conveying news (with or without other information)  
6 is not a purchase, use or sale of tangible personal property.

7 A person whose activities are organized and conducted  
8 primarily as a not-for-profit service enterprise, and who  
9 engages in selling tangible personal property at retail  
10 (whether to the public or merely to members and their guests)  
11 is engaged in the business of selling tangible personal  
12 property at retail with respect to such transactions,  
13 excepting only a person organized and operated exclusively  
14 for charitable, religious or educational purposes either (1),  
15 to the extent of sales by such person to its members,  
16 students, patients or inmates of tangible personal property  
17 to be used primarily for the purposes of such person, or (2),  
18 to the extent of sales by such person of tangible personal  
19 property which is not sold or offered for sale by persons  
20 organized for profit. The selling of school books and school  
21 supplies by schools at retail to students is not "primarily  
22 for the purposes of" the school which does such selling. The  
23 provisions of this paragraph shall not apply to nor subject  
24 to taxation occasional dinners, socials or similar activities  
25 of a person organized and operated exclusively for  
26 charitable, religious or educational purposes, whether or not  
27 such activities are open to the public.

28 A person who is the recipient of a grant or contract  
29 under Title VII of the Older Americans Act of 1965 (P.L.  
30 92-258) and serves meals to participants in the federal  
31 Nutrition Program for the Elderly in return for contributions  
32 established in amount by the individual participant pursuant  
33 to a schedule of suggested fees as provided for in the  
34 federal Act is not engaged in the business of selling

1 tangible personal property at retail with respect to such  
2 transactions.

3 "Purchaser" means anyone who, through a sale at retail,  
4 acquires the ownership of or title to tangible personal  
5 property for a valuable consideration.

6 "Reseller of motor fuel" means any person engaged in the  
7 business of selling or delivering or transferring title of  
8 motor fuel to another person other than for use or  
9 consumption. No person shall act as a reseller of motor fuel  
10 within this State without first being registered as a  
11 reseller pursuant to Section 2c or a retailer pursuant to  
12 Section 2a.

13 "Selling price" or the "amount of sale" means the  
14 consideration for a sale valued in money whether received in  
15 money or otherwise, including cash, credits, property, other  
16 than as hereinafter provided, and services, but not including  
17 the value of or credit given for traded-in tangible personal  
18 property where the item that is traded-in is of like kind and  
19 character as that which is being sold, and shall be  
20 determined without any deduction on account of the cost of  
21 the property sold, the cost of materials used, labor or  
22 service cost or any other expense whatsoever, but does not  
23 include charges that are added to prices by sellers on  
24 account of the seller's tax liability under this Act, or on  
25 account of the seller's duty to collect, from the purchaser,  
26 the tax that is imposed by the Use Tax Act, or on account of  
27 the seller's tax liability under Section 8-11-1 of the  
28 Illinois Municipal Code, as heretofore and hereafter amended,  
29 or on account of the seller's tax liability under the County  
30 Retailers' Occupation Tax Act, or on account of the seller's  
31 tax liability under the Home Rule Municipal Soft Drink  
32 Retailers' Occupation Tax, or on account of the seller's tax  
33 liability under any tax imposed under the "Regional  
34 Transportation Authority Act", approved December 12, 1973.

1 Effective December 1, 1985, "selling price" shall include  
2 charges that are added to prices by sellers on account of the  
3 seller's tax liability under the Cigarette Tax Act, on  
4 account of the sellers' duty to collect, from the purchaser,  
5 the tax imposed under the Cigarette Use Tax Act, and on  
6 account of the seller's duty to collect, from the purchaser,  
7 any cigarette tax imposed by a home rule unit.

8 The phrase "like kind and character" shall be liberally  
9 construed (including but not limited to any form of motor  
10 vehicle for any form of motor vehicle, or any kind of farm or  
11 agricultural implement for any other kind of farm or  
12 agricultural implement), while not including a kind of item  
13 which, if sold at retail by that retailer, would be exempt  
14 from retailers' occupation tax and use tax as an isolated or  
15 occasional sale.

16 "Gross receipts" from the sales of tangible personal  
17 property at retail means the total selling price or the  
18 amount of such sales, as hereinbefore defined. In the case  
19 of charge and time sales, the amount thereof shall be  
20 included only as and when payments are received by the  
21 seller. Receipts or other consideration derived by a seller  
22 from the sale, transfer or assignment of accounts receivable  
23 to a wholly owned subsidiary will not be deemed payments  
24 prior to the time the purchaser makes payment on such  
25 accounts.

26 "Department" means the Department of Revenue.

27 "Person" means any natural individual, firm, partnership,  
28 association, joint stock company, joint adventure, public or  
29 private corporation, limited liability company, or a  
30 receiver, executor, trustee, guardian or other representative  
31 appointed by order of any court.

32 The isolated or occasional sale of tangible personal  
33 property at retail by a person who does not hold himself out  
34 as being engaged (or who does not habitually engage) in

1 selling such tangible personal property at retail, or a sale  
2 through a bulk vending machine, does not constitute engaging  
3 in a business of selling such tangible personal property at  
4 retail within the meaning of this Act; provided that any  
5 person who is engaged in a business which is not subject to  
6 the tax imposed by this Act because of involving the sale of  
7 or a contract to sell real estate or a construction contract  
8 to improve real estate or a construction contract to  
9 engineer, install, and maintain an integrated system of  
10 products, but who, in the course of conducting such business,  
11 transfers tangible personal property to users or consumers in  
12 the finished form in which it was purchased, and which does  
13 not become real estate or was not engineered and installed,  
14 under any provision of a construction contract or real estate  
15 sale or real estate sales agreement entered into with some  
16 other person arising out of or because of such nontaxable  
17 business, is engaged in the business of selling tangible  
18 personal property at retail to the extent of the value of the  
19 tangible personal property so transferred. If, in such a  
20 transaction, a separate charge is made for the tangible  
21 personal property so transferred, the value of such property,  
22 for the purpose of this Act, shall be the amount so  
23 separately charged, but not less than the cost of such  
24 property to the transferor; if no separate charge is made,  
25 the value of such property, for the purposes of this Act, is  
26 the cost to the transferor of such tangible personal  
27 property. Construction contracts for the improvement of real  
28 estate consisting of engineering, installation, and  
29 maintenance of voice, data, video, security, and all  
30 telecommunication systems do not constitute engaging in a  
31 business of selling tangible personal property at retail  
32 within the meaning of this Act if they are sold at one  
33 specified contract price.

34 A person who holds himself or herself out as being

1 engaged (or who habitually engages) in selling tangible  
2 personal property at retail is a person engaged in the  
3 business of selling tangible personal property at retail  
4 hereunder with respect to such sales (and not primarily in a  
5 service occupation) notwithstanding the fact that such person  
6 designs and produces such tangible personal property on  
7 special order for the purchaser and in such a way as to  
8 render the property of value only to such purchaser, if such  
9 tangible personal property so produced on special order  
10 serves substantially the same function as stock or standard  
11 items of tangible personal property that are sold at retail.

12 Persons who engage in the business of transferring  
13 tangible personal property upon the redemption of trading  
14 stamps are engaged in the business of selling such property  
15 at retail and shall be liable for and shall pay the tax  
16 imposed by this Act on the basis of the retail value of the  
17 property transferred upon redemption of such stamps.

18 "Bulk vending machine" means a nonelectrically operated  
19 vending machine, containing unsorted confections, nuts or  
20 other merchandise which, when a coin of a denomination not  
21 larger than one cent is inserted, are dispensed in equal  
22 portions, at random and without selection by the customer.

23 (Source: P.A. 90-289, eff. 8-1-97.)